Supreme Court
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No. 90-1947

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1991

JOHN K. YEE and IRENE S. YEE,
H.N. and FRANCES C. BERGER FOUNDATION,
MOUNTAIN SHADOWS MOBILE HOME ESTATES,
RICHARD C. KUEBLER, dba MOONGLOW MOBILE
HOME PARK, CASA DE AMIGOS MOBILE HOME
ESTATE, VISTA VERDE, LTD., IMPERIAL
ESCONDIDO MOBILE ESTATES, and
MILDRED D. TACEY,
*Petitioners,*
VS.
THE CITY OF ESCONDIDO,
*Respondent.*

**On Writ of Certiorari to the Fourth Appellate District, Division One, Court of Appeal for the State of California**

## JOINT APPENDIX

## PETITION FOR CERTIORARI FILED JUNE 19, 1991
## CERTIORARI GRANTED OCTOBER 15, 1991

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## RELEVANT CASE EVENTS

| Date | Proceedings |
|---|---|
| 12/01/88 | Complaint filed; Summons issued. |
| 01/03/89 | Defendant's Motion to Strike and Accompanying Memorandum of Points and Authorities filed. |
| 01/03/89 | Defendant's Demurrer to Plaintiff's Complaint and Accompanying Memorandum of Points and Authorities filed. |
| 01/18/89 | Plaintiff's Points and Authorities in Opposition to Demurrer filed. |
| 01/26/89 | Defendant's Reply Memorandum in Support of Demurrer filed. |
| 01/31/89 | Minute Order on Defendant's Motion to Strike and Demurrer to Plaintiff's Complaint. |
| 02/10/89 | Oral Argument in San Diego Superior Court. |
| 02/10/89 | Minute Order Modified After Oral Argument. |
| 03/30/89 | Order Granting Motion to Strike; Sustaining Demurrer Without Leave to Amend; Dismissing Entire Action as to All Parties filed. |
| 04/05/89 | Notice of Signing of Order filed. |
| 04/12/89 | Defendant's Proof of Service for Notice of Signing of Order filed. |
| 06/08/89 | Plaintiffs' Notice of Appeal filed. |
| 10/05/89 | Appellants' Opening Brief filed in the Fourth Appellate District, Division One, California Court of Appeals. |
| 11/14/89 | Respondent's Brief filed. |

RELEVANT CASE EVENTS

| Date | Proceedings |
|---|---|
| 12/01/89 | Appellants' Reply Brief filed. |
| 05/07/90 | Oral Argument before the Fourth Appellate District, Division One, California Court of Appeals. |
| 10/31/90 | Decision of the Fourth Appellate District, Division One, California Court of Appeals filed. |
| 11/13/90 | Petition for Review of Decision of Court of Appeals (plaintiffs') filed in the California Supreme Court. |
| 12/21/90 | Answer to Petition for Review (defendant's) filed in the California Supreme Court. |
| 01/24/91 | Order of the California Supreme Court Denying Petition filed. |

No. 90-1947

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1991

JOHN K. YEE and IRENE S. YEE,
H.N. and FRANCES C. BERGER FOUNDATION,
MOUNTAIN SHADOWS MOBILE HOME ESTATES,
RICHARD C. KUEBLER, dba MOONGLOW MOBILE HOME PARK, CASA DE AMIGOS MOBILE HOME ESTATE, VISTA VERDE, LTD., IMPERIAL ESCONDIDO MOBILE ESTATES, and
MILDRED D. TACEY,
*Petitioners,*
VS.
THE CITY OF ESCONDIDO,
*Respondent.*

**On Writ of Certiorari to the Fourth Appellate District, Division One, Court of Appeal for the State of California**

## JOINT APPENDIX

**PETITION FOR CERTIORARI FILED JUNE 19, 1991**
**CERTIORARI GRANTED OCTOBER 15, 1991**

IN THE
SUPERIOR COURT OF THE
STATE OF CALIFORNIA
CITY OF SAN DIEGO

COMPLAINT IN INVERSE CONDEMNATION, FOR DECLARATORY RELIEF, DAMAGES FOR VIOLATION OF CONSTITUTIONAL & CIVIL RIGHTS, (CAL. CONSTITUTION, ARTICLE I § 19, FEDERAL CONSTITUTION 5TH & 14TH AMENDMENTS, 18 U.S.C. §§ 1981, 1982, 1983 & 1988)

COME NOW PLAINTIFFS JOHN K. YEE AND IRENE S. YEE, PLAINTIFFS, and hereby allege the following:

1. Defendant, CITY OF ESCONDIDO, is a public entity organized and existing under the laws of the State of California.

2. Plaintiffs are unaware of the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe and thereon allege that each of said fictitiously named defendants is in some manner responsible for the injury and damages to plaintiffs alleged herein.

3. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned defendants DOES 1, through 10 were the agents, servants, and employees of their codefendants and in doing the things hereinafter mentioned were acting within the course and scope of their authority as such agents, servants and



employees with the permission and consent of their codefendants.

4. On June, 1988, and at all times herein mentioned, plaintiffs were the owners of that certain real property known as Friendly Hills and Sunset Terrace Mobile Home Parks ("The Park") within the City of Escondido. The Park contains 159 spaces rented for occupancy by mobilehomes used by the owners of such mobilehomes for residential purposes.

5. On or about June, 1988, the CITY OF ESCONDIDO, after employment of the initiative process, adopted an ordinance establishing mobilehome rent protection (a copy of the proposed ordinance is attached hereto, marked *Exhibit A*, and by reference thereto fully incorporated herein); and amended said ordinance by *Ordinance Number 88-50* (a copy of which ordinance is attached hereto, marked *Exhibit B*, and by reference thereto fully incorporated herein). The CITY OF ESCONDIDO, through its agents, employees and personnel, is enforcing the provisions of the rent control law.

6. The rent control law has had the effect of depriving the plaintiffs of all use and occupancy of its real property and granting to the tenants of mobilehomes presently in The Park, as well as the successors in interest of such tenants, the right to physically permanently occupy and use the real property of Plaintiff. Plaintiffs have no legal right to receive any compensation for the rights now enjoyed by the tenants of The Park other than the stream of income from rents as regulated by the Rent Control Law.

7. The tenants of the Park have the power and ability, and have used that power and ability on many occasions, to sell the rights of use and occupancy of plaintiffs' real

property at reduced rentals, which have been transferred to said tenants by operation and enforcement of the Rent Control Law, to other parties without the consent of plaintiffs and to receive consideration from such other parties for the transfer of such rights.

8. The consideration for which the tenants of the Park can, and do, transfer the ownership of individual coaches is substantially in excess of the value of those coaches and the excess consideration over the value of the coaches is due to the rights of permanent physical occupation at a fixed reduced rent which have been transferred to the tenants of the Park by the operation and enforcement of the Rent Control Law.

9. The tenants of the Park have no obligation to account to Plaintiff for the proceeds of the sale of the rights which have been transferred to the tenants of the Park by the operation and enforcement of the Rent Control Law.

10. The operation and enforcement of the Rent Control Law effects a taking of plaintiff's property for public use and benefit without payment of just compensation in violation of Article 1, § 19 of the California Constitution and the Fifth and Fourteenth Amendments of the United States Constitution and a deprivation of civil rights under color of law in violation of 42 U.S.C. §§ 1981 and 1983.

11. The enforcement of the Rent Control Law by the CITY OF ESCONDIDO constitutes a taking of property by said defendant for private purposes in violation of Article 1, § 19 of the California Constitution and the 5th and 14th Amendments to the United States Constitution, and a deprivation of civil rights under the color of law in violation of 42 U.S.C. 1981 and 1983.

12. As a direct and proximate result of the operation and enforcement of the Rent Control Law by defendant,



plaintiffs have suffered damages in the amount of Six Million Dollars ($6,000,000.00).

13. Plaintiffs have received no compensation for the damage to plaintiffs' property.

14. Plaintiffs have incurred and will incur attorneys fees, expert witness fees in the nature of appraisal, in amounts that cannot be ascertained, but which are recoverable in this action under the provisions of § 1036 of the Code of Civil Procedure, and under provision of 42 U.S.C. §§ 1981, 1983 and 1988.

## SECOND CAUSE OF ACTION

15. Plaintiffs incorporate herein by reference all of the allegations contained in ¶¶ 1 through 14 hereof as though fully set forth.

16. The Rent Control Law is constitutionally infirm in that no emergency exists which justifies its imposition on plaintiff, and, therefore, continued enforcement thereof violates Article I, § 19 of the California Constitution and the 5th and 14th Amendments of the United States Constitution, and a deprivation of civil rights under color of law in violation of 42 U.S.C. §§ 1981 and 1983.

WHEREFORE, Plaintiffs pray judgment against defendants as follows:

1. For damages in the amount of Six Million Dollars ($6,000,000.00);

2. For declaration that the Rent Control Law is unconstitutional, invalid and unenforceable and that none of the parties hereto have any right, duty or obligation to comply with the terms and provisions thereof;

3. For a permanent injunction enjoining defendant, its agents, employees and all those acting by, through, for, on behalf of, or in concert with defendant, or pursuant to any of the provisions of the ordinance, from authorizing or engaging in, directly or indirectly, the enforcement of the ordinance;

4. For reasonable attorney's, appraisal, and other expert fees according to proof;

5. For costs of suit incurred herein; and,

6. For such other and further relief as the court deems proper.

Dated: December 1, 1988



## EXHIBIT A TO COMPLAINT

## PROPOSITION K

K. Shall the people of the City of Escondido approve the following: The people of the City of Escondido, California, do ordain as follows:

An Ordinance of the City of Escondido Establishing Mobilehome Rent Protection.

A measure establishing mobilehome rent control in the City of Escondido, providing as a base rent the rent in effect on January 1, 1986; establishing the Escondido City Council as a Mobilehome Park Rental Review Board; creating procedures and limitations for permitted rent increases; regulating terminations of tenancies; and giving certain remedies and defenses to mobilehome park tenants in the event of violations of this Ordinance?

---

## PROPOSED ORDINANCE

## AN ORDINANCE OF THE CITY OF ESCONDIDO ESTABLISHING MOBILEHOME RENT PROTECTION

1. *Definitions.* For the purposes of this ordinance, the following words, terms, and phrases shall be defined as follows: (a) Board shall mean the Mobilehome Park Rental Review Board of the City of Escondido. (b) Capital improvement shall mean the installation of new improvements and facilities and/or the replacement or reconstruction of existing improvements and facilities which consist of more than ordinary maintenance and/or repairs. (c) Department shall mean the Community Development Department of the City of Escondido. (d) Mobilehome shall mean a vehicle designed and equipped for human habitation and which is used as the principal place of habitation for the occupants thereof.

(e) Mobilehome park shall mean any area of land within the City of Escondido where two (2) or more mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation. (f) Mobilehome space shall mean the site within a mobilehome park intended, designed, or used for the location or accommodation of a mobilehome and any accessory structures or appurtenances attached thereto or used in conjunction therewith. (g) Owner shall mean the owner or operator of a mobilehome park or an agent or representative authorized to act on said owner's or operator's behalf in connection with the maintenance or operation of such park. (h) Rehabilitation work shall mean any renovation or repair work completed on or in a mobilehome park which was performed in order to comply with the direction or order of a public agency, or to repair damage resulting from fire, earthquake, or other casualty. (i) Rent shall mean the consideration paid for the use or occupancy of a mobilehome space. (j) Rental increase shall mean any increase in rent charged by an owner to a tenant, including but not limited to lease offers, lease renewal offers, and increase in monthly rents. (k) Tenancy shall mean the right of a tenant to use or occupy a mobilehome space. (l) Tenant shall mean a person who has a tenancy in a mobilehome park.

2. *The Mobilehome Park Rental Review Board.* (a) The City Council of the City of Escondido shall serve as the Mobilehome Park Rental Review Board. (b) The Board shall establish the time of any hearings or meetings held pursuant to this Ordinance and such hearings or meetings shall be held in the City Hall as often as the Board determines to be necessary to discharge its duties hereunder. (c) Three (3) members shall constitute a quorum for the purpose of conducting a hearing or meeting. Decisions of the Board shall be made by a majority vote of the



members present. (d) The duties and responsibilities of the Board shall include the hearing of all rent increase applications and determine either to approve or disapprove a rent increase in the manner provided for herein.

3. *Base Rent.* Except as hereinafter provided, an owner shall not demand, accept, or retain rent for a mobilehome space exceeding the rent in effect for said space on January 1, 1986. If a previously rented mobilehome space was not rented on January 1, 1986, the owner shall not demand, accept, or retain rent for said space exceeding the rent in effect during the last month the space was rented prior to January 1, 1986. If a mobilehome space is rented for the first time after January 1, 1986, the owner shall not demand, accept, or retain rent for said space exceeding the rent first charged for the space. No owner shall send a notice containing the specific amount of a proposed rental increase prior to receiving approval of a rent increase from the Board. Except as herein provided, an owner shall not demand, accept or retain rent exceeding the rent in effect on January 1, 1986, for a mobilehome space that was not regulated by this section prior to January 1, 1986. If such mobilehome space was not rented on January 1, 1986, the owner shall not demand, accept or retain rent for said space exceeding the rent in effect during the last month the space was rented prior to January 1, 1986.

4. *Permitted Rent Increases Based Upon an Application Approved by the Board.* (a) An owner may file with the Department a rent increase application for one or more mobilehome spaces for approval by the Board. (b) An application for a rent increase pursuant to this section shall be filed upon a form prescribed by the Department and shall be accompanied by the payment of a fee which will be determined by the Board; provided, however, that

no fee shall be charged for applications filed within the first one hundred eighty (180) days after the effective date of this Ordinance. Said application shall specify the address of the mobilehome park, the space number or numbers for which rent is requested to be increased, the amount of the requested rent increase, and the facts supporting the requested increase. The applicant shall produce at the request of the Department any records, receipts, reports, or other documents that the Department may deem necessary for the Board to make a determination whether to approve a rent increase. The application shall be made under penalty of perjury and supporting documents shall be certified or verified as requested by the Department. (c) Upon receipt of a rent increase application, the Department shall mail a notice to the affected tenants at the mobilehome spaces designated in the application, informing them of the receipt of such application, the amount of the requested rent increase, a brief summary of the owner's justification for the request, any supporting documents which may be inspected at the City Hall, the tenant's right to submit written statements, photographs or other documents relating to the application within thirty (30) days after the date the notice is mailed, and the address where such statements or documents may be mailed or delivered. (d) The Department shall determine within thirty (30) days after receipt of a rent increase application whether said application is complete. If the Department determines that said application is not complete, it shall notify the applicant in writing as to what additional information is required. (e) A copy of each rent increase application shall be provided to each member of the Board after such application is determined to be complete. The Board shall hold a hearing on said application within sixty (60) days after such determination is made except as provided in



subsection (i). Notice of the time, date, and place of the hearing shall be mailed to the applicant and the affected tenants at the mobilehome spaces designated in the application at least ten (10) days prior to the hearing. (f) At the hearing, the applicant and the affected tenants may offer any testimony that is relevant to the requested rent increase. The applicant and affected tenants may offer documents, written declarations, or other written evidence for the first time at the hearing only if good cause is shown why such evidence was not filed with the Department prior to the hearing. Formal rules of evidence shall not be applicable to such proceedings. Except as provided in subsection (j), within fifteen (15) days after the close of the hearing, the Board shall make its determination, pursuant to the standards established by subsection (g) of this section, approving or disapproving a rent increase for the mobilehome space or spaces specified in the rent increase application. (g) The Board shall approve such rent increase as it determines to be just, fair and reasonable. The Board shall consider the following factors, in addition to any other factors it considers relevant, in making such determination: (1) Changes in the Consumer Price Index for All Urban Consumers in the San Diego Metropolitan Area published by the Bureau of Labor Statistics. (2) The rent lawfully charged for comparable mobilehome spaces in the City of Escondido. (3) The length of time since the last hearing and final determination by the Board on a rent increase application or the last rent increase if no previous rent increase application has been made. (4) The completion of any capital improvements or rehabilitation work related to the mobilehome space or spaces specified in the rent increase application, and the cost thereof, including such items of cost, including materials, labor, construction interest, permit fees, and other items as the Board

deems appropriate. (5) Changes in property taxes or other taxes related to the subject mobilehome park. (6) Changes in the rent paid by the applicant for the lease of the land on which the subject mobilehome park is located. (7) Changes in the utility charges for the subject mobilehome park paid by the applicant and the extent, if any, of reimbursement from the tenants. (8) Changes in reasonable operating and maintenance expenses. (9) The need for repairs caused by circumstances other than ordinary wear and tear. (10) The amount and quality of services provided by the applicant to the affected tenant. (11) Any existing written lease lawfully entered into between the applicant and the affected tenant. (h) The Board may provide that an increase in rent or a portion of an increase in rent granted by the Board be limited to the length of time necessary to allow the park owner to reasonably amortize the cost of a capital improvement, including interest. Such increase granted as a result of the capital improvement shall not continue beyond the time necessary for reasonable amortization of the cost of such improvement. (i) Notice of the Board's determination shall be mailed to the applicant and all affected tenants at the mobilehome spaces designated in the application. The determination of the Board shall be final. (j) In the event that the Board is unable to act and make its final determination on a completed rent increase application within the time limitations prescribed by subsection (d)-(f) of this Section, and after the thirty (30) days for the tenant to file statements or documents in opposition to the application under subsection (c) shall have expired, the Board may approve such interim rent increases for the mobilehome space or spaces specified in said application which clearly appears to be warranted when the factors set forth in subsection (g) of this Section are considered, based upon the facts stated in the



application, any written statements or documents filed with the Department by the affected tenants, and any other facts known to the Board. An approved interim rent increase shall expire on either (1) the last day of the month within which the Board makes its final determination disapproving a rent increase, or (2) the effective date of a rent increase which is approved by a final determination of the Board. (k) The time within which the Board may conduct a hearing as provided in subsection (e) or make its determination as provided in subsection (f) may be extended twice by the Board for periods of time not to exceed sixty (60) days each if the Board approves an interim rent increase pursuant to subsection (j).

5. *Fees.* A tenant whose tenancy is not regulated by the provisions of the Mobilehome Residency Law shall not be charged a fee for anything other than rent or utilities with the exception of incidental reasonable charges for services actually rendered.

6. *Permissible Reasons for Terminating or Refusing to Renew a Tenancy.* (a) A tenancy which is not subject to the provisions of the Mobilehome Residency Law shall not be terminated nor shall its renewal be refused, except for one or more of the following reasons: (1) Failure of the tenant to comply with a local ordinance of State law or regulation relating to mobilehomes within a reasonable time after the tenant receives a notice of noncompliance from the appropriate governmental agency. (2) Conduct by the tenant, upon the mobilehome park premises, which constitutes a substantial annoyance to other tenants. (3) Failure of the tenant to comply with reasonable rule or regulation of the mobilehome park. No act or omission of the tenant shall constitute such failure to comply unless and until the owner has given the tenant written notice of the alleged rule or regulation violation and the

tenant has failed to adhere to the rule or regulation within seven (7) days. (4) Nonpayment of rent, utility charges, or reasonable incidental service charges. (5) Condemnation of the mobilehome park. (6) Change of Use of the Mobilehome Park, provided that the provisions of Subsection (f) of Section 798.56 of the California Civil Code are followed. (A) The owner gives the tenant written notice of the proposed change twelve (12) months or more before the date of the proposed change. (B) The owner gives each proposed tenant whose tenancy will commence within twelve (12) months of the proposed change written notice thereof prior to the inception of his tenancy. (b) Notice of termination or refusal to renew must be given in writing in the manner prescribed by Section 1162 of the Code of Civil Procedure at least sixty (60) days prior to the termination date of the tenancy. Said notice shall state the date the tenancy terminates, the reason for the termination or refusal to renew, and the specific facts upon which the owner is relying.

7. *Refusal of Tenant to Pay Illegal Rent.* A tenant may refuse to pay any rent in excess of the maximum rent permitted by this Ordinance. The fact that such unpaid rent is in excess of the maximum rent shall be a defense in any action brought to recover possession of a mobilehome space for nonpayment of rent or to collect the illegal rent.

8. *Remedies.* (a) Any person who demands, accepts, or retains any payment of rent in violation of the provisions of this Ordinance shall be liable in a civil action to the person from whom such payment is demanded, accepted or retained for damages in the sum of three (3) times the amount by which the payment or payments demanded, accepted, or retained exceed the maximum rent which could be lawfully demanded, accepted, or retained together with reasonable attorney's fees and costs as determined by the Court. (b) Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and shall be punishable in the manner provided by Section 1-13 of the Escondido Municipal Code.



9. *Severability.* If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and an independent provision and such decision shall not affect the validity of the remaining portion thereof.

EXHIBIT B TO COMPLAINT

ORDINANCE NO. 88-50

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CLARIFYING THE MOBILE HOME RENT PROTECTION ORDINANCE CONCERNING THE TREATMENT OF LONG TERM LEASES AFFECTING CURRENT AND NEW TENANTS

The City Council of the City of Escondido, California, in order to clarify the Ordinance of the City of Escondido Establishing Mobilehome Rent Protection, DOES HEREBY ORDAIN as follows:

SECTION 1. *Paragraph 1(j)* of that ordinance is amended to read as follows:

"Tenant" shall mean not only a person who has an existing tenancy in a mobilehome park but also a person who has purchased or is in the process of purchasing or otherwise acquiring a mobilehome that will remain at that particular park.

SECTION 2. A new paragraph 6 is inserted in that Ordinance to read as follows:

6. Long term Leases.

(a) Before any rental agreement or lease in excess of 12 months is offered to any tenant it must first be submitted to the Board for review to determine if it complies with the terms of this ordinance. It shall not be offered to the tenant until the proposed lease or rental agreement has been approved by the Board.

(b) Before any rental agreement or lease in excess of 12 months is executed by the tenant the owner must



(1) offer the tenant the option of a rental agreement for a term of 12 months or less, (2) provide the tenant with a copy of the City of Escondido Ordinance Establishing Mobilehome Rent Protection, as amended to that date, and (3) inform the tenant both orally and in writing that if the tenant signs a lease or rental agreement with a term in excess of 12 months the lease or rental agreement may not be subject to the terms and protections of the Escondido Mobilehome Rent Protection Ordinance.

(c) A lease or rental agreement in excess of 12 months executed by a tenant shall not be exempt from the Escondido Mobilehome Rent Protection Ordinance unless it complies with each and every requirement in Civil Code Section 798.17 (a)-(c) for exemption for such leases or rental agreements offered to "homeowners."

SECTION 3. Former paragraphs 6, 7, 8, and 9 of that Ordinance are renumbered as paragraphs 7, 8, 9, and 10.

SECTION 4. This ordinance shall take effect immediately after the date of its adoption.

SECTION 5. *Separability.* If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 6. That all ordinances, or parts of ordinances, in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within

15 days of its passage in the Times Advocate, a newspaper of general circulation, printed and published in the City of Escondido.

## DECLARATION OF URGENCY

Certain park owners are informing prospective mobilehome purchasers that the purchaser must sign a long term lease as a condition of the park owner's approval of the sale. As a result purchasers and prospective purchasers of mobilehomes in Escondido could be denied the benefits of the Rent Protection Ordinance. In addition the actions of these park owners are causing substantial hardships to current mobilehome owners. Some current mobilehome owners have jobs waiting for them out of state, and escrows on other residences that are about to close but the actions of these park owners have discouraged and frustrated sales of their mobilehomes. Other current homeowners, particularly those who are elderly, are very concerned and worried that if a long term lease is required that they also will be unable to sell their mobilehomes. This situation has the potential to cause, if it has not already caused, adverse effects on the health and welfare of Escondido citizens. Therefore, in order to prevent any additional hardships and adverse affects on the health and welfare of Escondido citizens it is necessary to immediately clarify the fact that the Rent Protection Ordinance was intended to provide protection not only for existing mobilehome owners but also for purchasers and prospective purchasers of mobilehomes in the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 24th day of August, 1988.



IN THE
SUPERIOR COURT OF THE
STATE OF CALIFORNIA
CITY OF SAN DIEGO

## DEFENDANT CITY OF ESCONDIDO'S DEMURRER TO PLAINTIFFS' COMPLAINT

Defendant, City of Escondido, demurrs [sic] to each of the causes of action alleged in Plaintiffs' Complaint on each of the following grounds:

1. The First Cause of Action does not state facts sufficient to constitute a cause of action; and

2. The Second Cause of Action does not state facts sufficient to constitute a cause of action.

DATED: January 2, 1989

IN THE
SUPERIOR COURT OF THE
STATE OF CALIFORNIA
CITY OF SAN DIEGO

DEFENDANT CITY OF ESCONDIDO'S MOTION TO STRIKE PORTIONS OF PLAINTIFFS' COMPLAINT

Defendant, City of Escondido, moves the Court for an order striking the following from Plaintiffs' Complaint:

1. From page 2, lines 28 to page 3, line 5, the following sentence: "The rent control law has had the effect of depriving the Plaintiffs of all use and occupancy of its real property and granting to the tenants of mobile homes presently in the Park, as well as the successor in interest of such tenants, the right to physically permanently occupy and use the real property of Plaintiffs."

2. From page 3, line 21, the following words: "of permanent physical occupation of a fixed reduced rent."

This motion is based on all pleadings, papers and records in this action, including the accompanying Memorandum of Points and Authorities.

DATED: January 2, 1989



IN THE
SUPERIOR COURT OF THE
STATE OF CALIFORNIA
CITY OF SAN DIEGO

EXHIBIT A TO DEFENDANT'S
MOTION TO STRIKE

AN ORDINANCE OF THE CITY OF ESCONDIDO
ESTABLISHING MOBILEHOME RENT
PROTECTION

1. Definitions. For the purposes of this ordinance, the following words, terms, and phrases shall be defined as follows:

(a) Board shall mean the Mobilehome Park Rental Review Board of the City of Escondido.

(b) Capital improvement shall mean the installation of new improvements and facilities and/or the replacement or reconstruction of existing improvements and facilities which consist of more than ordinary maintenance and/or repairs.

(c) Department shall mean the Community Development Department of the City of Escondido.

(d) Mobilehome shall mean a vehicle designed and equipped for human habitation and which is used as the principal place of habitation for the occupants thereof.

(e) Mobilehome park shall mean any area of land within the City of Escondido where two (2) or more mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation.

(f) Mobilehome space shall mean the site within a mobilehome park intended, designed, or used for the location or accommodation of a mobilehome and any

accessory structures or appurtenances attached thereto or used in conjunction therewith.

(g) Owner shall mean the owner or operator of a mobilehome park or an agent or representative authorized to act on said owner's or operator's behalf in connection with the maintenance or operation of such park.

(h) Rehabilitation work shall mean any renovation or repair work completed on or in a mobilehome park which was performed in order to comply with the direction or order of a public agency, or to repair damage resulting from fire, earthquake, or other casualty.

(i) Rent shall mean the consideration paid for the use or occupancy of a mobilehome space.

(j) Rental increase shall mean any increase in rent charged by an owner to a tenant, including but not limited to lease offers, lease renewal offers, and increase in monthly rents.

(k) Tenancy shall mean the right of a tenant to use or occupy a mobilehome space.

(l) Tenant shall mean a person who has a tenancy in a mobilehome park.

2. The Mobilehome Park Rental Review Board. (a) The City Council of the City of Escondido shall serve as the Mobilehome Park Rental Review Board.

(b) The Board shall establish the time of any hearings or meetings held pursuant to this Ordinance and such hearings or meetings shall be held in the City Hall as often as the Board determines to be necessary to discharge its duties hereunder.

(c) Three (3) members shall constitute a quorum for the purpose of conducting a hearing or meeting. Decisions



of the Board shall be made by a majority vote of the members present.

(d) The duties and responsibilities of the Board shall include the hearing of all rent increase applications and determine either to approve or disapprove a rent increase in the manner provided for herein.

3. Base Rent. Except as hereinafter provided, an owner shall not demand, accept, or retain rent for a mobilehome space exceeding the rent in effect for said space on January 1, 1986. If a previously rented mobilehome space was not rented on January 1, 1986, the owner shall not demand, accept, or retain rent for said space exceeding the rent in effect during the last month the space was rented prior to January 1, 1986. If a mobilehome space is rented for the first time after January 1, 1986, the owner shall not demand, accept, or retain rent for said space exceeding the rent first charged for the space. No owner shall send a notice containing the specific amount of a proposed rental increase prior to receiving approval of a rent increase from the Board. Except as herein provided, an owner shall not demand, accept or retain rent exceeding the rent in effect on January 1, 1986, for a mobilehome space that was not regulated by this section prior to January 1, 1986. If such mobilehome space was not rented on January 1, 1986, the owner shall not demand, accept or retain rent for said space exceeding the rent in effect during the last month the space was rented prior to January 1, 1986.

4. Permitted Rent Increases Based upon an Application Approved by the Board. (a) An owner may file with the Department a rent increase application for one or more mobilehome spaces for approval by the Board.

(b) An application for a rent increase pursuant to this section shall be filed upon a form prescribed by the Department and shall be accompanied by the payment of a fee which will be determined by the Board; provided, however, that no fee shall be charged for applications filed within the first one hundred eighty (180) days after the effective date of this Ordinance. Said application shall specify the address of the mobilehome park, the space number or numbers for which rent is requested to be increased, the amount of the requested rent increase, and the facts supporting the requested increase. The applicant shall produce at the request of the Department any records, receipts, reports, or other documents that the Department may deem necessary for the Board to make a determination whether to approve a rent increase. The application shall be made under penalty of perjury and supporting documents shall be certified or verified as requested by the Department.

(c) Upon receipt of a rent increase application, the Department shall mail a notice to the affected tenants at the mobilehome spaces designated in the application, informing them of the receipt of such application, the amount of the requested rent increase, a brief summary of the owner's justification for the request, any supporting documents which may be inspected at the City Hall, the tenant's right to submit written statements, photographs or other documents relating to the application within thirty (30) days after the date the notice is mailed, and



the address where such statements or documents may be mailed or delivered.

(d) The Department shall determine within thirty (30) days after receipt of a rent increase application whether said application is complete. If the Department determines that said application is not complete, it shall notify the applicant in writing as to what additional information is required.

(e) A copy of each rent increase application shall be provided to each member of the Board after such application is determined to be complete. The Board shall hold a hearing on said application within sixty (60) days after such determination is made except as provided in subsection (i). Notice of the time, date, and place of the hearing shall be mailed to the applicant and the affected tenants at the mobilehome spaces designated in the application at least ten (10) days prior to the hearing.

(f) At the hearing, the applicant and the affected tenants may offer any testimony that is relevant to the requested rent increase. The applicant and affected tenants may offer documents, written declarations, or other written evidence for the first time at the hearing only if good cause is shown why such evidence was not filed with the Department prior to the hearing. Formal rules of evidence shall not be applicable to such proceedings. Except as provided in subsection (j), within fifteen (15) days after the close of the hearing, the Board shall make its determination, pursuant to the standards established by subsection (g) of this section, approving or disapproving a rent increase for the mobilehome space or spaces specified in the rent increase application.

(g) The Board shall approve such rent increases as it determines to be just, fair and reasonable. The Board

shall consider the following factors, in addition to any other factors it considers relevant, in making such determination.

(1) Changes in the Consumer Price Index for All Urban Consumers in San Diego Metropolitan Area published by the Bureau of Labor Statistics.

(2) The rent lawfully charged for comparable mobilehome spaces in the City of Escondido.

(3) The length of time since either the last hearing and final determination by the Board on a rent increase application or the last rent increase if no previous rent increase application has been made.

(4) The completion of any capital improvements or rehabilitation work related to the mobilehome space or spaces specified in the rent increase application, and the cost thereof, including such items of cost, including materials, labor, construction interest, permit fees, and other items as the Board deems appropriate.

(5) Changes in property taxes or other taxes related to the subject mobilehome park.

(6) Changes in the rent paid by the applicant for the lease of the land on which the subject mobilehome park is located.

(7) Changes in the utility charges for the subject mobilehome park paid by the applicant and the extent, if any, of reimbursement from the tenants.

(8) Changes in reasonable operating and maintenance expenses.

(9) The need for repairs caused by circumstances other than ordinary wear and tear.



(10) The amount and quality of services provided by the applicant to the affected tenant.

(11) Any existing written lease lawfully entered into between the applicant and the affected tenant.

(h) The Board may provide than an increase in rent or a portion of an increase in rent granted by the Board be limited to the length of time necessary to allow the park owner to reasonably amortize the cost of a capital improvement, including interest. Such increase granted as a result of the capital improvement shall not continue beyond the time necessary for reasonable amortization of the cost of such improvement.

(i) Notice of the Board's determination shall be mailed to the applicant and all affected tenants at the mobilehome spaces designated in the application. The determination of the Board shall be final.

(j) In the event that the Board is unable to act and make its final determination on a completed rent increase application within the time limitations prescribed by subsection (d)-(f) of this Section, and after the thirty (30) days for the tenant to file statements or documents in opposition to the application under subsection (e) shall have expired, the Board may approve such interim rent increase for the mobilehome space or spaces specified in said application which clearly appears to be warranted when the factors set forth in subsection (g) of this Section are considered, based upon the facts stated in the application, any written statements or documents filed with the Department by the affected tenants, and any other facts known to the Board. An approved interim rent increase shall expire on either (1) the last day of the month within which the Board makes its final determination disapproving a rent increase, or (2) the effective date

of a rent increase which is approved by a final determination of the Board.

(k) The time within which the Board may conduct a hearing as provided in subsection (e) or make its determination as provided in subsection (f) may be extended twice by the Board for periods of time not to exceed sixty (60) days each if the Board approves an interim rent increase pursuant to subsection (j).

5. Fees. A tenant whose tenancy is not regulated by the provisions of the Mobilehome Residency Law shall not be charged a fee for anything other than rent or utilities with the exception of incidental reasonable charges for services actually rendered.

6. Permissible Reasons for Terminating or Refusing to Renew a Tenancy. (a) A tenancy which is not subject to the provisions of the Mobilehome Residency Law shall not be terminated nor shall its renewal be refused, except for one or more of the following reasons:

(1) Failure of the tenant to comply with a local ordinance or State law or regulation relating to mobilehomes within a reasonable time after the tenant receives a notice of noncompliance from the appropriate governmental agency.

(2) Conduct by the tenant, upon the mobilehome park premises, which constitutes a substantial annoyance to other tenants.

(3) Failure of the tenant to comply with reasonable rule or regulation of the mobilehome park. No act or omission of the tenant shall constitute such failure to comply unless and until the owner has given the tenant written notice of the alleged rule or regulation violation



and the tenant has failed to adhere to the rule or regulation within seven (7) days.

(4) Nonpayment of rent, utility charges, or reasonable incidental service charges.

(5) Condemnation of the mobilehome park.

(6) Change of Use of the Mobilehome Park, provided that the provisions of Subsection (f) of Section 798.56 of the California Civic Code are followed.

(A) The owner gives the tenant written notice of the proposed change twelve (12) months or more before the date of the proposed change.

(B) The owner gives each proposed tenant whose tenancy will commence within twelve (12) months of the proposed change written notice thereof prior to the inception of his tenancy. (b) Notice of termination or refusal to renew must be given in writing in the manner prescribed by Section 1162 of the Code of Civil Procedure at least sixty (60) days prior to the termination date of the tenancy. Said notice shall state the date the tenancy terminates, the reason for the termination or refusal to renew, and the specific facts upon which the owner is relying.

7. Refusal of Tenant to Pay Illegal Rent.

A tenant may refuse to pay any rent in excess of the maximum rent permitted by this Ordinance. The fact that such unpaid rent is in excess of the maximum rent shall be a defense in any action brought to recover possession of a mobilehome space for nonpayment of rent or to collect the illegal rent.

8. Remedies. (a) Any person who demands, accepts or retains any payment of rent in violation of the provisions of this Ordinance shall be liable in a civil action to

the person from whom such payment is demanded, accepted or retained for damages in the sum of three (3) times the amount by which the payment or payments demanded, accepted, or retained exceed the maximum rent which could be lawfully demanded, accepted, or retained together with reasonable attorney's fees and costs as determined by the Court.

(b) Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and shall be punishable in the manner provided by Section 1-13 of the Escondido Municipal Code.

9. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and an independent provision and such decision shall not affect the validity of the remaining portion thereof.



IN THE
SUPERIOR COURT OF THE
STATE OF CALIFORNIA
CITY OF SAN DIEGO

EXHIBIT B TO DEFENDANT'S
MOTION TO STRIKE

ORDINANCE NO. 88-50

AN URGENCY ORDINANCE OF
THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
CLARIFYING THE MOBILE HOME RENT
PROTECTION ORDINANCE CONCERNING
THE TREATMENT OF LONG TERM
LEASES AFFECTING CURRENT
AND NEW TENANTS

The City Council of the City of Escondido, California, in order to clarify the ordinance of the City of Escondido Establishing Mobilehome Rent Protection (the "Rent Protection Ordinance") DOES HEREBY ORDAIN as follows:

SECTION 1. For the purpose of implementing the Rent Protection Ordinance the term "Tenant" shall be understood to mean not only a person who has an existing tenancy in a mobilehome park but also a person who has purchased or is in the process of purchasing or otherwise acquiring a mobilehome that will remain at that particular park.

SECTION 2. Leases in excess of 12 months shall be treated as follows:

(a) Before any rental agreement or lease in excess of 12 months is offered to any tenant, it must first be submitted to the Rent Review Board (the "Board") for

review to determine if it complies with the terms of the Rent Protection Ordinance. It shall not be offered to the tenant until the proposed lease or rental agreement has been approved by the Board.

(b) Before any rental agreement or lease in excess of 12 months is executed by the tenant the owner must (1) offer the tenant the option of a rental agreement for a term of 12 months or less, (2) provide the tenant with a copy of the Rent Protection Ordinance, and (3) inform the tenant both orally and in writing that if the tenant signs a lease or rental agreement with a term in excess of 12 months which has been reviewed and approved by the Board in accordance with the provisions of the Rent Protection Ordinance, the lease or rental agreement may not be subject to the terms and protections of the Rent Protection Ordinance.

(c) A lease or rental agreement in excess of 12 months executed by a tenant shall not be exempt from the Rent Protection Ordinance unless it complies with each and every requirement in Civil Code Section 798.17(a) thru (c) for exemption for such leases or rental agreements offered to "homeowners."

SECTION 3. This ordinance shall take effect immediately after the date of its adoption.

SECTION 4. Separability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5. That all ordinances, or parts of ordinances, in conflict herewith are hereby repealed.



SECTION 6. That the City Clerk is hereby directed to certify to the passage of this ordinance and cause the same, or a summary prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in the Times Advocate, a newspaper of general circulation, printed and published in the City of Escondido.

## DECLARATION OF URGENCY

Certain park owner are informing prospective mobilehome purchasers that the purchaser must sign a long term lease as a condition of the park owner's approval of the sale. As a result purchasers and prospective purchasers of mobilehomes in Escondido could be denied the benefits of the Mobilehome Control Protection Ordinance. In addition the actions of these park owners are causing substantial hardships to current mobilehome owners. Some current mobilehome owners have jobs waiting for them out of state, and escrows on other residences that are about to close but the actions of these park owners have discouraged and frustrated sales of their mobilehomes. Other current homeowners, particularly those who are elderly, are very concerned and worried that if a long term lease is required that they also will be unable to sell their mobilehomes. This situation has the potential to cause, if it has not already caused, adverse effects on the health and welfare of Escondido citizens. Therefore in order to prevent any additional hardships and adverse affects on the health and welfare of Escondido citizens it is necessary to immediately clarify the fact that the Mobilehome Rent Protection Ordinance was intended to provide protection not only for existing mobilehome owners but also for purchasers and prospective purchasers of mobilehomes in the City of Escondido.

IN THE
SUPERIOR COURT OF THE
STATE OF CALIFORNIA
CITY OF SAN DIEGO

COURT'S MINUTE ORDER OF DEFENDANTS (CITY OF ESCONDIDO) HEARING OF DEFENDANT CITY OF ESCONDIDO'S DEMURRER AND MOTION TO STRIKE

Number N42268, Court convened at 2:00 p.m., Reporter M. Provinse, Clerk K. Kennard, Date January 31, 1989 (oral argument 2-10-89) Judge Hon. Don Martinson, Department B, Plaintiff-Petitioner, John K. Yee, et al., Attorney for Plaintiff, Jagiello, Defendant-Respondent, City of Escondido, et al., Attorney for Defendant-Respondent, Lincoln

Demurrer sustained without leave to amend, General, causes 1 and 2.

Other: telephonic confirmed & modified. Judicial notice taken as requested. Motion to strike granted without leave to amend. On its own motion, Court dismisses this action.



IN THE
SUPERIOR COURT OF THE
STATE OF CALIFORNIA
CITY OF SAN DIEGO

NOTICE OF APPEAL
[Cal Rules of Ct., Rule i(a)]

NOTICE IS HEREBY GIVEN that plaintiffs JOHN K. YEE and IRENE S. YEE hereby appeal from the Order of the Court sustaining the Demurrer to Plaintiffs' Complaint Without Leave to Amend and Dismissing the Entire Action as to All Parties, entered herein on March 30, 1989, Notice of Entry of which was given to plaintiffs by defendant through service by mail on or about April 10, 1989.